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Erich Bott

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Craig J Loest
Bsh Home Appliance Corporation
100 Bosch Boulevard
New Bern, NC 28562

EXAMINER

MULLER, BRYAN R

ART UNIT

PAPER NUMBER

3723

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DELIVERY MODE

06/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/539,536	Applicant(s) BOTT ET AL.	
	Examiner BRYAN R. MULLER	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/22/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 13, 19 and 28 were withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/10/2008. However, after completing a search in the prior art, the Examiner has determined that the differences between species I and species II are not considered to be patentably distinct because they are obvious variants of one another, specifically in view of Kelly (5,946,768), as will be discussed in the claim rejection below.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the seal member having an elongated tubular structure having a hollow cavity (claim 26) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate

changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 12 is objected to because of the following informalities: Claim 12 includes "means of a dust chamber" and "means of a separating wall". However, the term "means" is generally only used when invoking 35 U.S.C. § 112, 6th paragraph. In this case, both of the "means of a dust chamber" and "means of a separating wall" clearly provide structure, which therefore fails to meet the 3-prong analysis for invoking 35 U.S.C. § 112, 6th paragraph. Therefore, it is suggested that the applicant delete the term "means of" in lines 2 and 6 of claim 12. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 12, 15, 17, 18, 21, 22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Stettner (EP 0299213).

6. In reference to claim 12, Stettner discloses a vacuum cleaner comprising a housing (1) in which a dust chamber (2) is embodied for housing a dust separator (13) which may be sealed by a dust chamber lid (21) mounted on the housing (1), and a housing for accessory pieces (14/15) which can be closed by the dust chamber lid (21) and which is formed by an adjoining chamber (10) arranged directly adjacent to the dust chamber (2), which is separated from the dust chamber (2) in a dust-tight manner (dust-tight provided by seal 20) by a separating wall (18), and the dust chamber lid (12) has an opening through which the accessory pieces (14/15) can be removed from the adjoining chamber (10) when the dust chamber lid (21) is closed, wherein the dust chamber lid (21) has a closure part (27) for the opening.

7. In reference to claim 15, Stettner further discloses that a seal (20) is arranged between the dividing wall and the dust chamber lid, which is joined to the inside of the dust chamber lid (the lid has an extension positioned within a groove in the seal member, the lid may be considered to be joined to the seal) and abuts along an edge of the separating wall facing the dust chamber lid when the dust chamber lid is closed.

8. In reference to claim 17, the same vacuum cleaner of Stettner comprises a housing (1) defining an internal cavity (2); a lid (21) connected to the housing for providing access to the internal cavity, the lid being movable between an open condition in which internal cavity is open, and a closed condition, in which the internal cavity is closed; a wall (18) connected to the housing and defining a dust chamber within the

internal cavity, the wall having an edge (19) facing the lid; a dust separator disposed within the dust chamber for retaining dust; an accessory chamber (10) disposed within the internal cavity and the wall separating the accessory chamber from the dust chamber; and a seal member (20) forming a dust-tight seal between the wall and the lid when the lid is in the closed condition that prevents dust from passing from the dust chamber into the accessory chamber.

9. In reference to claim 18, Stettner further discloses that the lid includes an opening adjacent the accessory chamber and providing access to the accessory chamber when the lid is in the closed condition while the seal between the wall and the lid is maintained and a closure part (27) for closing the opening.

10. In reference to claims 21 and 24, as seen in Figures 1 and 2, when the lid is in the closed condition, both the wall and the lid have an extension positioned within a groove in the seal member, thus both the lid and the wall may be considered to be connected to the seal such that the seal contacts the lid and the wall to for the dust-tight seal.

11. In reference to claim 22, the seal member is connected to the edge of the wall, as discussed supra, and the seal is shown as a separate part than the wall. Thus it is inherent that the seal may be removed from the wall by some manner (even if the seal is formed as a single piece with the wall, the seal could be cut from the wall to remove the seal therefrom, thus being removably connected).

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12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stettner (EP 0299213).

14. In reference to claim 23, the limitation that the seal is molded onto the edge of the wall is considered to be a Product-by-Process claim limitation, which is only limited to the structure implied by the claimed process steps (see MPEP 2113). In this case, the process of molding the seal onto the edge of the wall does not imply any further structure than that disclosed by Stettner having the seal positioned on the edge of the wall.

15. Claims 16, 25-27, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stettner (EP 0299213) in view of Meyerhoefer (2,779,432).

16. In reference to claims 16, 25 and 26, Stettner discloses the vacuum cleaner, as discussed supra, wherein the seal includes at least a sealing lip (any of the extensions in the vertical direction may be considered to be a sealing lip), but Stettner fails to disclose that the seal may be an elastomer-like material. Meyerhoefer discloses a vacuum cleaner having a housing that is separated into different sections and includes a seal (40) that is positioned between portions of the housing to seal the sections of the housing from one another. Meyerhoefer further discloses that the seal is preferably

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formed of rubber, which is a well known material for seal members, and teaches that the seal preferably has an air chamber (43) that will ensure that the seal molds to a surface being pressed against it without requiring fine tolerances to form the seal (Col. 3, lines 13-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the seal of Stettner out of a similar elastomeric material that includes an air chamber to form a tubular structure having an elongated tubular structure with a hollow cavity, as taught by Meyerhoefer, to provide a seal member that will ensure a seal is made between the surfaces of the lid (21) and the wall (18) without requiring high tolerances of the seal.

17. In reference to claim 27, The vacuum cleaner of Stettner, as discussed supra, comprises all of the limitations of claim 27 except for disclosing that the seal is formed of an elastomeric material. As discussed supra, it would have been obvious to form the seal member out of an elastomeric material, such as rubber, being a known material for sealing gaskets and as taught by Meyerhoefer as a preferable material for a similar seal member in a vacuum cleaner.

18. In reference to claim 30, as seen in Figures 1 and 2, when the lid is in the closed condition, the edge of the wall has an extension positioned within a groove in the seal member, thus the wall may be considered to be connected to the seal such that the seal and, as discussed supra, it is inherent that the seal may be removed from the wall by some manner (even if the seal is formed as a single piece with the wall, the seal could be cut from the wall to remove the seal therefrom, thus being removably connected).

19. In reference to claim 31, the limitation that the seal is molded onto the edge of the wall is considered to be a Product-by-Process claim limitation, which is only limited to the structure implied by the claimed process steps (see MPEP 2113). In this case, the process of molding the seal onto the edge of the wall does not imply any further structure than that disclosed by Stettner having the seal positioned on the edge of the wall.

20. Claims 12, 13, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura (JP 04-256715) in view of Stettner (EP 0299213).

21. In reference to claim 12, Nishimura discloses a vacuum cleaner comprising a housing (9) in which a dust chamber is embodied for housing a dust separator (11) which may be sealed by a dust chamber lid (12) mounted on the housing (9), and a housing for accessory pieces which can be closed by the dust chamber lid (12; dust chamber lid forms the bottom of the housing for the accessory pieces, thus the lid 12 acts to close the housing for the accessory pieces) and which is formed by an adjoining chamber (14) arranged directly adjacent to the dust chamber, which is separated from the dust chamber by a separating wall (part of 12), and the dust chamber lid (12) has an opening through which the accessory pieces can be removed from the adjoining chamber when the dust chamber lid (12) is closed, wherein the dust chamber lid (12) has a closure part (13) for the opening. However, Nishimura fails to disclose that the adjoining chamber (14) for housing the accessory pieces is separated *in a dust-tight manner* by the separating wall. As discussed supra, Stettner discloses a similar

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vacuum cleaner having adjacent dust chambers and accessory housing chambers and teaches that a seal may be provided to the dust chamber lid between the dust chamber and accessory housing chamber to effectively seal the dust chamber from the accessory housing chamber in a dust-tight manner, which will allow a user to open the accessory housing chamber to replace or remove accessories during operation of the vacuum without losing the suction of the vacuum cleaner through the dust chamber, allowing a user to continue cleaning operations while selecting or replacing accessories without needing to turn the vacuum cleaner off when accessing the accessory housing chamber. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a similar seal to the dust chamber lid to seal the dust chamber from the accessory housing chamber in a dust-tight manner, as taught by Stettner, to allow a user to continue cleaning operations while selecting or replacing accessories without needing to turn the vacuum cleaner off when accessing the accessory housing chamber.

22. In reference to claim 17, the combination of Nishimura and Stettner, as discussed *supra*, discloses all of the limitations set forth in claim 17.

23. In reference to claims 13 and 19, Nishimura further discloses that the closure part (13) includes a flap pivotally hinged on the lid to open and close the opening. Portion 17 acts to pivot the closure on the lid, as if connected by a hinge, wherein a

definition of the term “hinged” is “to attach as if by a hinge”¹. Therefore, the closure part of Nishimura is considered to be pivotally hinged on the lid.

24. Claims 14 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura (JP 04-256715) in view of Stettner (EP 0299213) as applied to claims 12 and 17 and further in view of Kelly (5,946,768).

25. In reference to claims 14 and 19, Nishimura discloses that the closure part may be a flap (or door) that is pivotally hinged to the dust chamber lid but fails to disclose that the closure part may alternatively be a blind that can be displaced in the plane of the dust chamber lid. Kelly discloses a workstation that comprises a vacuum cleaner wherein the housing of the workstation also houses the vacuum cleaner and has a plurality of chambers for housing a dust collecting unit or for storage of parts and tools, similar to the chambers disclosed by Nishimura. Kelly further discloses that the different chambers may be accessed by hinged doors, sliding partitions or a flexible roll door (Col. 3, lines 3-4), thus teaching that a roll door (or blind) is a known equivalent in the art of vacuum housings to a hinged door as known closure parts. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the hinged door (or flap; 13) disclosed by Nishimura may be replaced by a sliding partition or a flexible roll door (or blind), as taught by Kelly as being known equivalents in the art. Further, the roll door (95) shown by Kelly in Fig. 2 is shown to be displaced in

¹ *Dictionary.com Unabridged (v 1.1)*

Based on the Random House Unabridged Dictionary, © Random House, Inc. 2006.

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the plane of the supporting structure of the housing. Therefore, it further would have been obvious that the flexible roll door (or blind), when provided in place of the hinged door (13) of Nishimura, would be displaced in the plane of the supporting portions of lid (12) to open or close the accessory housing chamber (14).

26. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura (JP 04-256715) in view of Stettner (EP 0299213) as applied to claims 12 and 17 and further in view of Meyerhoefer (2,779,432).

27. In reference to claim 27, the combination of Nishimura and Stettner, as discussed supra, discloses all of the limitations set forth in claim 27 except that Stettner fails to disclose that the seal may be a deformable elastomer-like material. Meyerhoefer discloses a vacuum cleaner having a housing that is separated into different sections and includes a seal (40) that is positioned between portions of the housing to seal the sections of the housing from one another. Meyerhoefer further discloses that the seal is preferably formed of rubber, which is a well known flexible material for seal members, and teaches that the seal preferably has an air chamber (43) that will ensure that the seal molds to a surface being pressed against it without requiring fine tolerances to form the seal (Col. 3, lines 13-59). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the seal of Stettner out of a similar flexible elastomeric material that includes an air chamber to form a tubular structure having an elongated tubular structure with a hollow cavity, as taught by

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Meyerhoefer, to provide a seal member that will ensure a seal is made between the surfaces of the lid (21) and the wall (18) without requiring high tolerances of the seal.

28. In reference to claim 28, as discussed supra, Nishimura further discloses that the closure part (13) includes a flap pivotally hinged on the lid to open and close the opening.

29. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura (JP 04-256715) in view of Stettner (EP 0299213) and Meyerhoefer (2,779,432) as applied to claim 27 and further in view of Kelly (5,946,768).

30. In reference to claim 29, as discussed supra, Nishimura discloses that the closure part may be a flap (or door) that is pivotally hinged to the dust chamber lid but fails to disclose that the closure part may alternatively be a blind that can be displaced in the plane of the dust chamber lid. Kelly discloses a workstation that comprises a vacuum cleaner wherein the housing of the workstation also houses the vacuum cleaner and has a plurality of chambers for housing a dust collecting unit or for storage of parts and tools, similar to the chambers disclosed by Nishimura. Kelly further discloses that the different chambers may be accessed by hinged doors, sliding partitions or a flexible roll door (Col. 3, lines 3-4), thus teaching that a roll door (or blind) is a known equivalent in the art of vacuum housings to a hinged door as known closure parts. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the hinged door (or flap; 13) disclosed by Nishimura may be replaced by a sliding partition or a flexible roll door (or blind), as taught by Kelly

as being known equivalents in the art. Further, the roll door (95) shown by Kelly in Fig. 2 is shown to be displaced in the plane of the supporting structure of the housing. Therefore, it further would have been obvious that the flexible roll door (or blind), when provided in place of the hinged door (13) of Nishimura, would be displaced in the plane of the supporting portions of lid (12) to open or close the accessory housing chamber (14).

Conclusion

31. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kiyoshi (JP 05-115391), Hashizume et al. (5,168,598) and Rideout et al. (3,619,850) all disclose vacuum cleaners having similar structure and function as the applicant's claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRYAN R. MULLER whose telephone number is (571)272-4489. The examiner can normally be reached on Monday thru Thursday and second Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bryan R Muller/
Examiner, Art Unit 3723
6/3/2008